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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.769 OF 2007

M/s.Rizvi Builders ... Petitioners
versus
The Joint Charity Commissioner
and another ... Respondents

Shri M.A.Khan for petitioners.
Shri S.B.Amin for respondent no.2.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

PC :

1. Heard advocates appearing for the parties. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 13th June 2006 passed by the learned Joint Charity Commissioner, Mumbai. The second respondent, a public charitable trust, is the owner of the land admeasuring 9931.9 sq.mtrs. bearing Survey No.231, CTS No.55, at Malad, Mumbai. A permission was granted by the Charity Commissioner by order dated 30th January 1996 under section 36(1) of the Bombay Public Trust Act, 1950 (hereinafter referred to as the said

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Act of 1950) to the trustees of the second respondent to sell the said land to the petitioner for a consideration of Rs.15.25 lakh. By a further order dated 19th August 1997, the learned Charity Commissioner directed that the sale deed shall be executed within a period of one year from the date of the said order.

2. An application was made by the Manager of the second respondent trust before the Charity Commissioner for extension of time to execute the conveyance in terms of order granting sanction. The contention of the second respondent trust before the Charity Commissioner was that there was a hurdle in registration of the conveyance as No Objection Certificate from the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the said Act of 1976) could not be obtained. The learned Joint Charity Commissioner rejected the said application by the impugned order dated 13th June 2006 on the ground that the period of eight to nine years had elapsed from the date of granting sanction for sale. He observed that the petitioner-purchaser was at fault and if the sale is permitted to be effected, it will be the trust which will be the sufferer.

3. The learned counsel for the petitioner submitted that it was for the second respondent to give notice to the competent authority and secure consent of the competent authority. It was submitted that on account of the default of the second respondent the conveyance could not be executed. He pointed out that the the entire consideration has been paid in the year 1997 itself and therefore, the learned Joint Charity Commissioner ought to have extended the time for execution of the sale deed. He submitted that the petitioner has been put in possession of the property. He invited my attention to the fact that the trustees of the second respondent passed a resolution to the effect that the Charity Commissioner may be moved for grant of extension of time till 31st March 2007 to complete the sale. He pointed out that now the trustees have taken a stand to the contrary by filing a reply to this petition and now they are opposing the prayer for grant of extension of time. He pointed out that the order impugned is passed on the basis of an application made by the second respondent. He, therefore, submitted that the petitioner cannot be allowed to suffer as there is no fault on the part of the petitioner.

4. The learned advocate appearing for the second respondent pointed out that the statement made by the advocate for the petitioner which is referred to in the order dated 5th February 2007 passed by this Court is not correct and in fact the possession is not handed over to the petitioner. He invited my attention to the terms and conditions of the sale of the said property.

5. I have considered the submissions. The order of sanction under section 36 of the said Act of 1950 has been passed on 30th January 1996 by the learned Joint Charity Commissioner. The sale was permitted to be effected at the price of Rs.15.25 lakh. While granting the permission, the Joint Charity Commissioner had noted that the land is not free from encumbrances. It is also pointed out that the land has been declared as a slum area. By a further order dated 19th August 1997, the Joint Charity Commissioner directed that the sale shall be completed within a period of one year from the date of the order.

6. It will be necessary to refer to the terms and conditions of the sale. Clause-6 of the terms and conditions records that the second

respondent will not be responsible for giving vacant possession of the land and possession of the property shall be deemed to have been given by the second respondent to the purchaser (petitioner) at the time of execution of the conveyance. Clause-8 records that it will be the responsibility of the petitioner to obtain necessary clearances from the competent authority under the said Act of 1976. Thus, as per the terms and conditions, it was the responsibility of the petitioner-purchaser to obtain necessary clearances.

7. My attention has been invited to an application dated 9th March 2001 purportedly made under section 27(2) of the said Act of 1976. The said application is made by the second respondent trust. The petitioner was aware about the said application as a statement annexed to the said application is signed by the proprietor of the petitioner. There is nothing on record to show that any further steps have been taken by the petitioner to procure clearances on the basis of the said application dated 9th March 2001.

8. It is true that an application for extension of time was made by the trust itself. However,

considering the scheme of Section 36 of the said Act of 1950, the Charity Commissioner was under no obligation to extend time merely because the trustees were consenting. The Charity Commissioner was required to pass an order regard being had to the interest, benefit and protection of the trust. The learned Joint Charity commissioner was right in observing that no efforts were made by the petitioner to secure necessary clearances from the competent authority. The price of the property was fixed in the year 1996. It cannot be disputed that there is a large escalation in the prices of immovable properties in Mumbai during last ten years. Considering the interest of the trust and of its beneficiaries, the learned Joint Charity Commissioner was fully justified in rejecting the prayer made by the second respondent for grant of extension of time. The sale deed ought to have been executed on or before 18th August 1998. It was not in the interest of the trust to grant extension of time in the year 2006.

9. Hence, no fault can be found with the impugned order. Writ Petition is rejected.

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(A.S.OKA, J.)